

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
China Post Group–United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2011-7

NOTICE AND ORDER CONCERNING RATE ADJUSTMENT
FOR BILATERAL AGREEMENT WITH CHINA POST 2011
AND FUNCTIONALLY EQUIVALENT NEGOTIATED SERVICE AGREEMENT

(Issued August 22, 2011)

I. INTRODUCTION

On August 16, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.* that it has entered into an additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 agreement.¹ The Notice

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 16, 2011 (Notice). See *also* Docket Nos. MC2010-35, R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, September 30, 2010 (Order No. 549).

concerns the inbound portion of a Multi-Product Bilateral Agreement with China Post Group (China Post 2011 Agreement) that the Postal Service seeks to add to the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement, and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement). In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement.² The Postal Service asserts that the China Post 2011 Agreement is similar to the China Post 2010 Agreement, TNT Agreement, and the HongKong Post Agreement. The Postal Service requests that the China Post 2011 Agreement be included within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 2.

In support of its Notice, the Postal Service filed two attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal; and
- Attachment 2—a redacted copy of the China Post 2011 Agreement.

China Post 2011 Agreement. The Postal Service filed the instant contract pursuant to 39 CFR 3010.40 *et seq.* The Postal Service states that the proposed inbound market dominant rates are intended to become effective on October 1, 2011 after the rates that are currently in effect under the China Post 2010 Agreement expires on September 30, 2011. *Id.* at 3. The China Post 2011 Agreement provides that it

² See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post—United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

becomes effective after all regulatory approvals have been received, acceptance of specific business rules by both parties, notification to China Post, and mutual agreement on an effective date. *Id.* Attachment 2 at 2. The agreement however, may be terminated by either party no less than 30 days' written notice. *Id.* at 3. It states that public notice of the rates is provided through its filing at least 45 days before the proposed effective date. Notice at 3. The Postal Service and China Post Group, the postal operator for China, are parties to the agreement. The Postal Service relates that the agreement covers inbound Letter Post, in the form of letters, flats, small packets, and bags, and International Registered Mail service for Letter Post along with an ancillary service for delivery confirmation scanning for Letter Post small packets. *Id.* at 3-4.

Requirements under part 3010. The Postal Service states that the China Post 2011 Agreement is expected to generate financial performance improvements including, e.g., delivery confirmation service, barcodes for delivery confirmation, sortations for routing, and service updates. It contends that these improvements should enhance mail efficiency and other functions for Letter Post items under the agreement. *Id.* at 5.

The Postal Service asserts that the agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5-6.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this agreement through its Annual Compliance Report. While indicating its willingness to provide information on mailflows within the annual compliance review process, the Postal Service proposes that no special data collection plan be established for this agreement. With respect to performance measurement, it requests that the Commission exempt this agreement from separate reporting requirements under 39 CFR 3055.3 as determined in Order Nos. 549 and 700 for the agreements in Docket Nos. R2010-5, R2010-6, and R2011-4, respectively. *Id.* at 7.

The Postal Service advances reasons why the agreement is functionally equivalent to the previously filed China Post 2010 Agreement, TNT and HongKong Post Agreements and contains the same attributes and methodology. *Id.* at 8-10. It asserts that the instant agreement fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with the Foreign Postal Operators 1 product. Additionally, it states that the China Post 2011 Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory with accompanying ancillary services. *Id.* at 9.

The Postal Service identifies specific terms that distinguish the instant agreement from the three existing agreements. These distinctions include the term, purpose of the agreement, effective date, confidentiality terms, signatory, revision of product stream rates, detailed air conveyance charges, specifications for letters, related updates, and other changes. *Id.* at 10-12. The Postal Service contends that the instant agreement is nonetheless functionally equivalent to existing agreements and "[t]he Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts." *Id.* at 12.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 12; *id.* Attachment 1.

The Postal Service concludes that the China Post 2011 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 13.

II. NOTICE OF FILINGS

Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3622 and 39 CFR

part 3010.40. Comments are due no later than August 30, 2011.³ The public portions of these filings can be accessed via the Commission's website (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2011-7 to consider matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than August 30, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary

³ To provide interested persons sufficient time to comment in these proceedings, the Commission finds it appropriate to waive the 10-day comment period specified in 39 CFR 3010.44(a)(5). The modest extension will not prejudice either party to the agreement given the 45 days' advance notice required for Type 2 rate adjustments.